2016 IL App (4th) 140497-U

NO. 4-14-0497

FILED
March 17, 2016
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from |
| Plaintiff-Appellee, | ) | Circuit Court of |
| v. | ) | Morgan County |
| MICHAEL JACKSON, | ) | No. 87CF121 |
| Defendant-Appellant. | ) | |
| | ) | Honorable |
| | ) | Jeffery E. Tobin, |
| | ) | Judge Presiding. |

JUSTICE POPE delivered the judgment of the court.
Justices Turner and Steigmann concurred in the judgment.

**ORDER**

¶ 1 *Held*: The trial court was not prohibited from immediately considering defendant's *pro se* successive section 2-1401 petition before the State responded.

¶ 2 Defendant, Michael Jackson, appeals from the trial court's *sua sponte* dismissal of his *pro se* petition for relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2014)) prior to the 30-day time period within which the State could respond. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In December 1987, defendant pleaded guilty to residential burglary. The State agreed to request a four-year sentence in exchange for defendant's guilty plea.

¶ 5 At the March 1988 sentencing hearing, defendant filed a motion to vacate his guilty plea. The docket entry indicates the trial court denied defendant's motion to vacate his

plea and sentenced him to four years' imprisonment followed by two years' mandatory supervised release (MSR). Although the record contains no direct appeal, the docket entry from defendant's sentencing hearing indicated his stated desire to file an appeal. The court appointed counsel to represent defendant in filing his appeal. In April 1988, counsel filed a motion to vacate defendant's plea, but the record does not contain any further action by the court regarding this motion.

¶ 6 In January 2011, defendant filed a *pro se* motion for writ of error *coram nobis*, alleging his appointed counsel failed to file an appeal after his original plea despite the fact defendant informed counsel of his desire to appeal. In February 2011, the State moved to dismiss the writ, noting writs of error *coram nobis* had been abolished under Illinois law with the adoption of section 2-1401 of the Code (735 ILCS 5/2-1401 (West 2010)). The State argued the two-year time period within which to file a petition under section 2-1401 had passed and noted defendant had not claimed the time period should be tolled due to a legal disability or duress. Alternatively, the State argued defendant failed to state a claim for which relief could be granted.

¶ 7 In March 2011, the trial court recharacterized defendant's motion for writ of error *coram nobis* as a section 2-1401 petition for relief from judgment and dismissed it as untimely. In so doing, the court stated, "It has been 24 years since the sentencing in this case. The defendant was aware of the status of the case, yet took no steps to appeal the case." Defendant did not appeal the court's judgment.

¶ 8 In April 2011, defendant filed a *pro se* petition for postconviction relief pursuant to the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 to 122-7 (West 2010)), alleging he received ineffective assistance of counsel where appointed counsel failed to file a requested appeal following defendant's sentencing. Also in April 2011, the State filed a motion to dismiss,

arguing defendant lacked standing under the Act because he had fully served the sentence he received in connection with the underlying case. In June 2011, the trial court dismissed defendant's postconviction petition as untimely because defendant had already served his prison sentence and MSR. In July 2011, defendant filed a notice of appeal. In January 2012, this court granted the office of the State Appellate Defender's (OSAD) motion to withdraw pursuant to *Pennsylvania v.* Finley, 481 U.S. 551 (1987), and affirmed the trial court's judgment. *People v. Jackson*, 2012 IL App (4th) 110587-U (unpublished order under Supreme Court Rule 23).

¶ 9 In November 2011, defendant filed a *pro se* motion requesting a hearing date for the "[p]ending" (April 1988) motion to vacate his guilty plea. The trial court denied the motion, finding "the same issue has previously been decided by this [c]ourt." In December 2011, defendant appealed the trial court's order "entered November 16, 2011[,] pursuant to action in his criminal case on February 22nd, 1988."

¶ 10 On appeal, defendant argued trial counsel was ineffective for failing to (1) pursue a hearing on his motion to vacate his guilty plea and (2) file an Illinois Supreme Court Rule 604(d) (eff. Oct. 1, 1983) certificate. This court noted the only matter available for review was the trial court's order of November 16, 2011. In affirming the trial court, this court stated:

> "In this case, defendant waited 24 years, until November 2011, to file a motion requesting a hearing on his April 1988 motion to vacate his guilty plea. The record reflects defendant was aware of the 1988 motion during his period of incarceration. Defendant has since served his sentence and MSR term and is no longer in custody in Illinois on the underlying offense. Thus, we find defendant has abandoned his motion by failing to pursue it

> within a reasonable time after its filing. [Citation.] While the trial court dismissed defendant's motion by finding 'the same issue had previously been decided by this Court[,]' this court reviews the trial court's judgment, not its rationale. [Citation.] As a result, we can affirm the decision of the trial court for any reason supported by the record. [Citation.] Here, the trial court did not err in dismissing defendant's request for a hearing on his 24-year-old motion where he abandoned that motion by failing to pursue it within a reasonable period of time." *People v. Jackson*, 2012 IL App (4th )111069-U, ¶ 18 (unpublished order under Supreme Court Rule 23).

¶ 11 On March 25, 2014, defendant filed a *pro se* motion for judgment on the pleading, in which he sought the trial court's review of the April 1988 motion to vacate his guilty plea. On April 16, 2014, the trial court dismissed the petition as frivolous and patently without merit, noting "the same issue was addressed by this [c]ourt on November 16, 2011."

¶ 12 On May 1, 2014, defendant filed a *pro se* motion for summary judgment pursuant to section 10-121 of the Code (735 ILCS 5/10-121 (West 2014)) and a *pro se* petition for relief from judgment pursuant to section 2-1401 of the Code (735 ILCS 5/2-1401 (2014)). In his motion for summary judgment, defendant argued (1) "[b]ased on newly discovered evidence of actual innocence, 725 ILCS 5/122-1(C) [*sic*], it is not barred by any statutory time limitation"; (2) "Rule 54(b) allows the [c]ourt to revisit 'any' nonfinal judgment at 'anytime,' " particularly where the initial decision is clearly erroneous and would work a manifest injustice, such as where the April 1988 motion is still 'pending' "; (3) after defendant asked to withdraw his guilty

plea, "the [j]udge should have protected [his] [c]onstitutional [r]ights by providing him an opportunity to make a statement about his lawyer[']s poor advice"; and (4) his attorney had a conflict of interest. Defendant's prayer for relief sought "[a] plea to a lesser charge or amend the motion to be heard."

¶ 13 In his section 2-1401 petition, defendant stated (1) the trial court had never ruled on the April 1988 motion to vacate his guilty plea and (2) his trial counsel failed to file a notice of appeal. Defendant alleged, and the docket entry from the sentencing hearing reflects, he indicated he wanted to appeal. Defendant further alleged his family attempted to contact counsel on numerous occasions to inquire about the status of the appeal. Counsel eventually informed defendant not to call him anymore about the appeal and he would contact defendant when there was news about the appeal. Counsel never contacted defendant, and once defendant finished his sentence, "he simply forgot about the appeal." Defendant alleged he is now suffering adverse consequences from the denial of his right to appeal because the 1987 burglary conviction was used to enhance a federal court sentence he is now serving. Defendant asked to proceed on the writ of *coram nobis* and allow him a new appeal.

¶ 14 The record contains no response from the State.

¶ 15 On May 13, 2014, the trial court *sua sponte* dismissed the motion for summary judgment and section 2-1401 petition as frivolous and patently without merit.

¶ 16 This appeal followed.

¶ 17 II. ANALYSIS

¶ 18 On appeal, defendant argues the trial court erred when it *sua sponte* dismissed the section 2-1401 petition before the expiration of the 30-day period within which the State has to respond to the petition. He urges this court to vacate the trial court's ruling and remand for

further proceedings. We decline to do so.

¶ 19 Absent an evidentiary hearing on a petition, we review the dismissal of a section 2-1401 petition *de novo* (*People v. Vincent*, 226 Ill. 2d 1, 14-15, 871 N.E.2d 17, 26-27 (2007)) and may affirm the dismissal on any basis supported by the record, regardless of the reasoning or the grounds relied upon by the trial court (*People v. Harvey*, 379 Ill. App. 3d 518, 521, 884 N.E.2d 724, 728 (2008)).

¶ 20 In *People v. Haynes*, 192 Ill. 2d 437, 461, 737 N.E.2d 169, 182 (2000), the supreme court stated:

> "A section 2-1401 petition for relief from a final judgment is the forum in a criminal case in which to correct all errors of fact occurring in the prosecution of a cause, unknown to the petitioner and court at the time judgment was entered, which, if then known, would have prevented its rendition. [Citations.] A section 2-1401 petition, however, is not designed to provide a general review of all trial errors nor to substitute for direct appeal. [Citation.] Points previously raised at trial and other collateral proceedings cannot form the basis of a section 2-1401 petition for relief. [Citation.]" (Internal quotation marks omitted.)

¶ 21 Here, defendant was unsuccessful when he previously raised these issues in (1) a January 2011 section 2-1401 petition filed 24 years after he was sentenced, (2) an April 2011 postconviction petition (dismissal upheld on appeal in January 2012), (3) a November 2011 motion for hearing on the April 1988 motion to vacate his guilty plea (dismissal upheld on appeal in November 2012), and (4) a March 2014 motion for judgment on the pleadings.

Twenty-seven years after he was sentenced, he is again raising the very same issues in the section 2-1401 petition which is the subject of this appeal.

¶ 22 Defendant argues *People v. Laugharn*, 233 Ill. 2d 318, 323, 909 N.E.2d 802, 805 (2009), precludes the trial court from *sua sponte* ruling on his section 2-1401 petition before the 30 days have expired for the State to respond. We disagree.

¶ 23 In *People v. Donley*, 2015 IL App (4th) 130223, ¶¶ 1-3, 29 N.E.3d 683, the defendant filed a section 2-1401 petition in January 2013, which the trial court *sua sponte* dismissed in March 2013. In June 2013, the defendant filed a successive section 2-1401 petition, which the court dismissed later that month. This court found:

> "Under the circumstances presented in this case, we reject defendant's argument that the supreme court's decision in *Laugharn* prohibits a trial court from immediately considering a *successive* section 2-1401 petition that (1) does not comport with the requirements outlined in section 2-1401 of the Code or (2) raises claims the court has previously considered and rejected or could have been raised in the initial section 2-1401 pleading. As we have previously noted, the 30-day rule announced in *Laugharn*, was intended to allow a party sufficient time to respond to a section 2-1401 petition instead of empowering a prisoner to persist in filing frivolous claims. The supreme court in *Laugharn* was not dealing with a *successive* section 2-1401 petition, and we do not believe that the supreme court would limit a trial court's authority on handling such petitions, especially, as here, when they are

clearly frivolous. Moreover, to proceed as defendant urges would not only be inconsistent with the court's 'traditional right of discretionary control over its own dockets' [citation], but also the public policy component of conserving limited judicial resources and time [citation]." (Emphasis in original.) *Id.* ¶ 42, 29 N.E.3d 683.

¶ 24 In the instant case, no reason exists to remand this case to the trial court to wait 30 days for the State to respond to another untimely section 2-1401 petition in which the very same issues have been repeatedly rejected. As we stated in *Donley*:

"If we were to hold otherwise, defendant could file *successive* section 2-1401 petitions weekly, and the trial court would be burdened with keeping track of which bogus petition had been filed more than 30 days earlier, so it could *sua sponte* dismiss it with prejudice. Or the court could shift that obligation to the already overburdened State's Attorney's office to determine when and how to address these spurious pleadings. Such a result would be unconscionable, and we will have no part in imposing such requirements." (Emphasis in original.) *Id.* ¶ 43, 29 N.E.2d 683.

¶ 25 In accordance with our ruling in *Donley*, we reject defendant's argument *Laugharn* requires us to remand this case to the trial court to allow the State 30 days to respond to his *successive* section 2-1401 petition. While the record reflects defense counsel may have neglected defendant's case by failing to call the April 1988 motion to vacate defendant's plea for hearing, defendant has failed to exercise any diligence, much less "due" diligence, in bringing his

claim to the attention of the trial court.

¶ 26 III. CONCLUSION

¶ 27 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002(a) (West 2014).

¶ 28 Affirmed.